Supreme Court, U.S.
FILED
SEP 2 1971
E. ROBERT SEAVER, CLERK

No. 71-166

In the Supreme Court of the United States

OCTOBER TERM, 1971

LURA VIRGINIA BICKEL LEE CARTER, PETITIONER

v.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, ET AL.,

and

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-166

LURA VIRGINIA BICKEL LEE CARTER, PETITIONER

v.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, ET AL.,

and

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. This is an action by The Connecticut Mutual Life Insurance Company to foreclose a mortgage upon land owned by petitioner. The United States was named as a defendant because of a second mortgage held by the Farmers Home Administration. The district court granted foreclosure of both mortgages, and at the resulting foreclosure sale Connecticut Mutual purchased the property for $434,190.37—a sum somewhat in excess of the $418,111.49 in principal and interest due it. The district court confirmed the

443-239-71

sale over the petitioner's objections. Petitioner appealed, urging that the district court should have held a hearing on her objections.[1]

While the appeal was pending, the government, which had not bid at the foreclosure sale, exercised its statutory right of redemption under 28 U.S.C. 2410 and advised the court that it was willing to credit to petitioner's account $900,000—the sum it would have bid at the foreclosure sale under its regulation—less the amount actually bid by Connecticut Mutual.

The court of appeals affirmed the district court's confirmation of the sale. However, taking note of the government's redemption of the property, it remanded the case to the district court for a determination of the sum to be credited to petitioner's account. Petitioner unsuccessfully petitioned for rehearing or, in the alternative, for certification to the Florida Supreme Court under Section 25.031 of the Florida Statutes for a determination whether Section 702.02(5) of the Florida statutes requires a hearing on objections to a foreclosure. The instant petition requests this Court to order the court of appeals to employ Florida's certification procedure.

2. The petition presents no question warranting review by this Court. Whether to employ the Florida certification procedure when a question of state law bears on a case in the lower federal courts is a question

[1] The district court also held, over the government's objection, that the government's second mortgage lien was inferior to the first mortgagee's lien for attorneys fees. On the government's appeal, the court of appeals, after rehearing, affirmed.

within the discretion of those courts. In *Clay* v. *Sun Insurance Office*, 363 U.S. 207, this Court held that a court of appeals cannot avoid a state question where there are no controlling state precedents and, in that connection, suggested that on remand the court of appeals might want to employ the Florida certification procedure if it required the aid of the Florida courts in deciding the state issue. But nothing in *Clay*, as petitioner concedes (Pet. 8), suggests that employment of the certification procedure is mandatory.

The court below did not abuse its discretion. First, although the question whether Section 702.02(5) of the Florida Statutes requires a court to hold a hearing on a mortgagor's objections to a foreclosure sale has been at issue since the district court denied petitioner's objections, petitioner did not request certification of the question to the Florida Supreme Court until she filed her petition for rehearing in the court of appeals. Second, the court of appeals reasonably concluded that the objections raised by petitioner were not of a nature requiring a hearing for their resolution (Pet. App. A6). Finally, as the court of appeals pointed out, petitioner had not requested a hearing when she filed her objections in the district court (Pet. App. A6). Accordingly, the court of appeals was amply justified in not employing Florida's certification procedures.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1971.

U.S. GOVERNMENT PRINTING OFFICE 1971